IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEGHENY UNIVERSITY MEDICAL PRACTICES	:	**CIVIL ACTION**
v.	:	
SIDNEY HILLMAN MEDICAL CENTER and PHILADELPHIA JOINT BOARD, Union of Needletrades, Industrial & Textile Employees	:	**NO. 98-2414**

MEMORANDUM and ORDER

Norma L. Shapiro, J. **May 19, 1998**

Plaintiff Allegheny University Medical Practices ("Allegheny"), seeking an Order enjoining arbitration under a collective bargaining agreement and compelling arbitration under a management agreement, filed this action against defendants Sidney Hillman Medical Center ("Hillman") and Philadelphia Joint Board, Union of Needletrades, Industrial and Textile Employees ("Union"). Allegheny moved for a temporary restraining order ("TRO"), granted by the Emergency Judge on May 8, 1998, and for a preliminary injunction. For the reasons stated below, Allegheny's motion for preliminary injunction will be denied.

BACKGROUND

Hillman and the Medical College of Pennsylvania ("MCP"), Allegheny's predecessor, entered into a Licensure and Management Agreement (the "Management Agreement") dated September 3, 1991, amended in February, 1993 and October, 1996. As MCP's successor, Allegheny is bound by the Management Agreement. (Management

Agreement ¶ 17.d, attached as Ex. 1 to Pltff.'s Brief). Under the terms of the Management Agreement, Allegheny has "full authority to operate and manage [the Hillman facility] and to take all such actions and carry on all such activities as shall be usual and customary in the operation of healthcare facilities." (Id. ¶ 1.a).

The Management Agreement states that Allegheny will "use its best efforts not to layoff or otherwise terminate the employment of any employee," except as necessary to operate Hillman in an economically efficient manner. (Id. ¶ 3.g). Any dispute under paragraph 3.g is subject to binding arbitration as provided under the Management Agreement. (Id. ¶ 3.g.8).[1] "In the event of a disagreement arising by reason of an action taken by [Allegheny] under this Agreement with respect to employees of [Hillman], any such dispute will be resolved pursuant to the voluntary labor arbitration rules of the American Arbitration Association." (Id. ¶ 3.c). The Management Agreement only contemplates binding arbitration under American Arbitration Association ("AAA") rules. (Id. ¶ 12).

The Management Agreement contemplated the existence of collective bargaining agreements between the Union and Allegheny

[1] Paragraph 3.g.8 actually states that any disputes under paragraph "4.g" are subject to binding arbitration. The Management Agreement contains no ¶ 4.g, and the parties agreed at the preliminary injunction hearing that "4.g" is a typographical error; the provision should refer to ¶ 3.g.

for Hillman. Allegheny agreed to abide by any then-existing collective bargaining agreements and negotiate in good faith with the Union "for the rendition of future services at [Hillman], and with respect to wages, benefits, and working conditions of employees of [Hillman]." (Id. ¶ 3.e).

The Union entered into a Collective Bargaining Agreement with Hillman (signed on its behalf by Allegheny) on May 14, 1997. "Full power of discharge and discipline" remain with Allegheny, as the operator of Hillman. (Collective Bargaining Agreement ¶ 23). After discharge, the Union has the right to investigate and demand arbitration according to the following provision:

> All grievances and disputes arising in the Center shall be adjusted if possible between the Union chairman and the Supervisor or other person in charge of the Center. Such grievances shall be adjusted, whenever possible, after working hours.... If the parties are unable to make such an adjustment, the matter shall then be referred to Robert E. Light, Esq., the Impartial Arbitrator for settlement. The decision of the Impartial Arbitrator shall be final and binding.

(Id. ¶ 27).

On May 4, 1998, after several months of negotiations between Allegheny and the Union about the possibility of voluntary severances to accomplish Allegheny's operational requirements, Allegheny laid off seven Hillman employees and reduced four full-time employees to part-time status. (Compl. ¶ 12).

The following day, May 5, 1998, Bernard Katz, Esq. ("Katz"),

counsel for the Union[2] contacted Robert Light, Esq.'s ("Light") office and arranged for an arbitration under the Collective Bargaining Agreement for May 8, 1998. (Katz Letter, attached as Ex.6 to Compl.).

Allegheny, arguing that it had not received adequate notice of the scheduled arbitration and there was no arbitrable dispute under the Collective Bargaining Agreement because that agreement does not cover lay offs, objected to the May 8, 1998 arbitration before Light. Light and the Union declined to postpone the scheduled arbitration while the parties attempted to resolve whether the arbitration of reduction in work force is governed by the procedures set forth in the Management Agreement (AAA arbitration) or the Collective Bargaining Agreement (Light arbitration). Allegheny then filed this action with a petition for TRO on May 8, 1998. The Emergency Judge granted Allegheny's petition for TRO the same day. This court held a hearing on Allegheny's petition for preliminary injunction on May 15, 1998.

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[2] Katz represents both the Union and the Hillman facility itself. As the court stated during the preliminary injunction hearing, Katz's simultaneous representation of both employees and their employer raises serious concerns of conflict of interest. Katz has assured the court that, in this instance, the positions of Hillman and the Union are in complete agreement and no conflict exists. Because of the potential conflict between Hillman and Allegheny concerning the conflicting arbitration duties imposed on Allegheny as Hillman's agent, the court does not agree that no potential conflict exists between the Union and Hillman. However, Allegheny did not move to recuse Katz so the court permitted his representation of both Hillman and the Union.

DISCUSSION

The Norris-LaGuardia Act (the "Act"), 29 U.S.C. § 101, et seq., governs labor disputes. A labor dispute involves "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 113(c). There is no question discharge or work-reduction of several employees is a "labor dispute" under the Act.

Congress has expressed an intent to limit federal court jurisdiction to issue labor injunctions.

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

29 U.S.C. § 101.

When litigants are parties to a labor contract containing an arbitration clause, a presumption of arbitrability arises. See Lukens Steel Co. v. United Steelworkers of Am., 989 F.2d 668, 673 (3d Cir. 1993). "The overriding purpose of federal labor law is to allow the parties, to the extent possible, to settle their own disputes in accordance with their contractual agreements."

United Telegraph Workers v. Western Union Corp., 771 F.2d 699, 704 (3d Cir. 1985).

A federal court may only enjoin a labor arbitration after making the following findings:

> (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained ...;
>
> (b) That substantial and irreparable injury to complainant's property will follow;
>
> (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
>
> (d) That complainant has no adequate remedy at law; and
>
> (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

29 U.S.C. § 107. "Strict adherence to the Act's procedures is not a mere matter of form: A district court has no jurisdiction under the Norris-LaGuardia Act to issue a labor injunction without adhering to the explicit terms of the Act." United Telegraph Workers, 771 F.2d at 704.

"[A]rbitration should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." AT&T Technologies, Inc. v. Communications Workers of Am., 475 U.S. 643, 650 (1986); see Steelworkers v. Warrior & Gulf

Navigation Co., 363 U.S. 574, 582-83 (1960); PaineWebber, Inc. v. Hartmann, 921 F.2d 507, 513 (3d Cir. 1990); E.M. Diagnostic Sys., Inc. v. International B'hood of Teamsters, Chauffeurs, Warehousemen & Helpers, 812 F.2d 91, 95 (3d Cir. 1987).

Allegheny has produced no evidence the Union is engaged in illegal activity. The only action taken by the Union is a request under the Collective Bargaining Agreement for arbitration before Light. It seems likely the Collective Bargaining Agreement, rather than the Management Agreement, provides for arbitration of at least part of this dispute. The Collective Bargaining Agreement, entered into by the Union and Hillman (with Allegheny representing Hillman as its agent) several years after Allegheny and Hillman signed the Management Agreement, states it applies to "discharges." (Collective Bargaining Agreement ¶ 23). Here, Allegheny discharged at least several workers although it reduced others to part-time status for budgetary reasons.

Allegheny argues that lay offs are more specifically addressed in the earlier Management Agreement, but the more recent Collective Bargaining Agreement supersedes any inconsistent language in the Management Agreement. See In re Klugh's Estate, 66 A.2d 822, 825 (Pa. 1949). The Management Agreement expressly states that Allegheny will not lay off workers in violation of a valid collective bargaining agreement with the Union, (Management Agreement ¶ 3.g.7); Allegheny agreed

in the Management Agreement to comply with any subsequent collective bargaining agreements. If the more recent Collective Bargaining Agreement applies to this labor dispute, there is no illegal Union activity to enjoin.

Allegheny also has failed to show that it will suffer irreparable injury if the Light arbitration is not enjoined. Allegheny on behalf of Hillman may have the opportunity to argue before Light that there is no arbitrable dispute under the Collective Bargaining Agreement.[3] After Light's ruling, if there is no voluntary compliance by the losing party, the successful party may seek compliance in district court. An arbitration award may be set aside if the arbitrator exceeded the scope of his authority or was not impartial. See 9 U.S.C. § 10. "The reluctant party to the arbitration therefore retains its right to a judicial determination of the arbitrator's jurisdiction; it will simply come after the arbitration rather than before." Camping Construction Co. v. District Council of Iron Workers, 915 F.2d 1333, 1347-48 (9th Cir. 1990), cert. denied, 500 U.S. 953 (1991).

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[3] It is unclear what position Hillman takes in the dispute between the Union and Hillman over Allegheny's employment actions. As the agent of Hillman, Allegheny might be precluded from arguing a position contrary to Hillman's. Allegheny signed the Collective Bargaining Agreement as Hillman's agent, but Allegheny may be the real party in interest to the Collective Bargaining Agreement and not be bound by the position of Hillman regarding the arbitration. This issue will be for the arbitrator in the first instance.

Allegheny has also sought an Order compelling Hillman to arbitrate under the Management Agreement. Counsel for Hillman stated at the preliminary injunction hearing that it has no opposition to proceeding to arbitration under the Management Agreement on issues unrelated to the present work force reduction. Allegheny may proceed to arbitration of disputes with Hillman about the application of the Management Agreement to lay offs and reductions in work force. However, this court will not compel arbitration under the Management Agreement because Allegheny, as Hillman's agent, subsequently entered into the Collective Bargaining Agreement and knew it superseded the prior arbitration provisions of the Management Agreement. Allegheny may be able to argue before Arbitrator Light that he does not have jurisdiction to entertain this arbitration, but Light will have the opportunity to make that determination. Allegheny's petition for preliminary injunction will be denied.

Because Allegheny has sought no relief other than an injunction, this action will be marked closed. An appropriate Order follows.

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ORDER

AND NOW, this 19th day of May, 1998, upon consideration of plaintiff Allegheny University Medical Practices' petition for preliminary injunction, defendants Sidney Hillman Medical Center's and Philadelphia Joint Board, Union of Needletrades, Industrial & Textile Employees' response thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. Plaintiff's petition for preliminary injunction is **DENIED**.

2. The temporary restraining order entered on May 8, 1998 is **VACATED**.

3. The Clerk of Court is directed to mark this action **CLOSED**.

Norma L. Shapiro, J.